

IN THE UNITED STATES DISTRICT COURT
OR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Respondent,

2:92-cr-0315-GEB-PAN-P

VS.

CHARLES D. MATLOCK,

Movant.

ORDER

Movant, a federal prisoner proceeding pro se, has timely filed a notice of appeal of this court's April 4, 2006 denial of his motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255, together with a request for a certificate of appealability, see 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b), and a motion for leave to proceed in forma pauperis on appeal.

A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The court must either issue a certificate of appealability indicating which issues satisfy the required showing or must state the reasons why such a certificate should not issue. Fed. R. App. P. 22(b).

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For the reasons set forth in the magistrate judge's February 8, 2006 findings and recommendations, movant has not made a substantial showing of the denial of a constitutional right. Accordingly, movant's request for a certificate of appealability will be denied.

Movant has also filed a motion for leave to proceed in forma pauperis on appeal. Examination of the in forma pauperis affidavit reveals that petitioner is unable to afford the costs of suit. Accordingly, petitioner's motion for leave to proceed in forma pauperis on appeal will be granted. See 28 U.S.C. § 1915(a).

In accordance with the above, IT IS HEREBY ORDERED that:

1. Movant's May 5, 2006 motion for leave to proceed in forma pauperis on appeal is granted;
2. Movant's May 5, 2006 request for a certificate of appealability is denied; and
3. The Clerk of the Court is directed to process movant's notice of appeal to the United States Court of Appeals for the Ninth Circuit.

Dated: October 3, 2006

/s/ Garland E. Burrell, Jr.
GARLAND E. BURRELL, JR.
United States District Judge

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